

AMENDED IN SENATE SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 665**

**Introduced by Assembly Member Correa**

February 19, 2003

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~~An act to amend Section 5000.5 of the Business and Professions Code, relating to professional and vocational boards. An act to amend Section 1812.101 of the Civil Code, relating to discount buying organizations.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 665, as amended, Correa. ~~Professions and vocations: California Board of Accountancy: members—Discount buying organizations.~~

*Existing law regulates membership contracts for discount buying organizations, as defined. Certain discount buying organizations are exempted from these provisions, including, but not limited to, organizations that are paid no more than \$100 for the purchase of discount buying services, as specified, that maintain a bond of \$20,000, and that establish, maintain, and file with the Secretary of State specified information regarding a \$50,000 escrow account used to provide membership fee refunds, as specified.*

*This bill would instead exempt from those provisions, discount buying organizations that are paid no more than \$200 for the purchase of discount buying services, that maintain a bond of \$40,000, and that establish, maintain, and file with the Secretary of State specified*

information regarding a \$100,000 escrow account, as specified. The bill would also require that the \$200 limit for the purchase of discount buying services be adjusted annually according to a specified consumer price index.

~~Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy. Existing law provides that a public member of the board may not be a current or former licensee of the board, or a person currently or formerly employed by a public accounting firm, bookkeeping firm, or tax preparation firm.~~

~~This bill would also preclude a person from being a public member of the board if he or she represents a public accounting firm, bookkeeping firm, or tax preparation firm.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 5000.5 of the Business and Professions~~  
2     ~~SECTION 1. Section 1812.101 of the Civil Code is amended~~  
3     ~~to read:~~

4     1812.101. For the purpose of this title, the following  
5     definitions shall be used:

6     (a) “Discount buying organization” means any person or  
7     persons, corporation, unincorporated association, or other  
8     organization which, for a consideration, provides or purports to  
9     provide its clients or the clients or members of any other discount  
10    buying organization with the ability to purchase goods or services  
11    at discount prices, except that a discount buying organization does  
12    not include any of the following:

13    (1) Any discount buying organization in which the total  
14    consideration paid by each client or member in any manner  
15    whatsoever for the purchase of discount buying services from the  
16    organization that either:

17    (A) Does not exceed a one-time fee of fifty dollars (\$50) or an  
18    annual fee of twenty-five dollars (\$25) to be paid on a yearly basis.

19    (B) Does not exceed a one-time or annual fee of fifty dollars  
20    (\$50) and the organization provides a majority of the goods and  
21    services through purchases by members who walk in to a fixed  
22    location operated by the organization.

(2) Any discount buying organization in which the total consideration paid by each client or member in any manner whatsoever for the purchase of discount buying services from the organization does not exceed a one-time or annual fee of ~~one~~ *two* hundred dollars ~~(\$100)~~ *(\$200)* and the organization does all of the following in subparagraphs (A) to (F), inclusive, and *as subject to* subparagraph ~~(G)~~ *(G)*. *Commencing on January 1, 2005, the limit specified in this paragraph shall be annually adjusted to reflect changes in the California Consumer Price Index for All Urban Consumers, as published by the California Department of Industrial Relations, based on regional data from the United States Department of Labor, Bureau of Labor Statistics.*

(A) Offers buying services to clients or members through toll-free telephone access, computer access, or video shopping terminals.

(B) (i) During the first year of membership of each member, upon the request of the member, provides a full refund of membership fees, exclusive of any fees, however designated, not exceeding ten dollars (\$10) in the aggregate, without conditions other than the surrender or destruction of materials which allow the member to access or use the service.

(ii) (I) The organization shall establish an escrow account of ~~fifty one hundred~~ thousand dollars ~~(\$50,000)~~ *(\$100,000)* for the purpose of providing refunds to members, pursuant to clause (i). If the ~~fifty one hundred~~ thousand dollars ~~(\$50,000)~~ *(\$100,000)* deposited in escrow is depleted during the first year of the existence of the escrow account, the organization shall within three business days of depletion replenish the account in the amount of ~~fifty one hundred~~ thousand dollars ~~(\$50,000)~~ *(\$100,000)*. For each calendar year thereafter, the organization shall deposit in the account an amount equal to refunds made from the account in the prior calendar year, but not less than ~~fifty one hundred~~ thousand dollars ~~(\$50,000)~~ *(\$100,000)*. At any time the balance in the escrow account decreases to 50 percent of the amount funded that year, the organization shall within three business days replenish the account back to the balance required at the beginning of that calendar year. The organization shall provide proof of the establishment of the escrow account to the Secretary of State and shall maintain records of all member requests for refunds and refunds made pursuant to this clause. The records shall be made

1 available for review upon request by the Attorney General, any  
2 district attorney, or the Department of Justice.

3 (II) The escrow account shall be established and maintained at  
4 a federally insured bank or federally insured financial institution  
5 independent of the organization with escrow instructions making  
6 the bank or financial institution or an officer or employee thereof  
7 the escrow trustee.

8 (III) Refunds shall be made from the escrow account to any  
9 member who provides proof of membership while a California  
10 resident and requests, in writing, a membership refund, and who  
11 has not previously been refunded his or her membership fee. The  
12 escrow trustee shall issue the refund within 10 days of the date the  
13 written request is received by the escrow trustee. In addition,  
14 requests for refunds may be made directly to and paid directly by  
15 the organization.

16 (IV) Proof of creation of the escrow account, and membership  
17 refund information, shall be provided to the members in the  
18 following form:

19 “The \_\_\_\_ (organization) has established an escrow account for  
20 the refund of membership fees at \_\_\_\_ (financial institution).  
21 Refunds from the escrow account may, in addition to other  
22 remedies and sources available to you, be obtained by mailing a  
23 written request along with proof of membership to \_\_\_\_ (escrow  
24 trustee). This refund request shall not affect or limit any other  
25 remedy at law available to you.”

26 (C) Provides at least 15 toll-free service lines to California  
27 consumers devoted exclusively to customer service questions and  
28 complaints.

29 (D) Maintains a bond which meets the requirements of  
30 Sections 1812.103 and 1812.104, except that the principal sum of  
31 the bond need only be ~~twenty~~ *forty* thousand dollars ~~(\$20,000)~~  
32 *(\$40,000)*.

33 (E) (i) Possesses an unrevoked acknowledgment from the  
34 Attorney General that the organization has provided to the  
35 Attorney General, to the Attorney General’s reasonable  
36 satisfaction, marketing procedures and documents that clearly  
37 explain membership fee cancellation and refund terms ~~which~~ *that*  
38 include:

39 (I) The amount of the initial membership fee and how and when  
40 it will be collected.

1 (II) If applicable, that a member must be advised, before any  
2 charges are applied, that they need not provide billing information  
3 in order to be charged a membership fee, in circumstances in which  
4 the telemarketing firm has prior access to the member's billing  
5 information.

6 (III) In the case of trial membership offers, the duration of the  
7 trial period and that if the member does not cancel within the trial  
8 period he or she will automatically be charged the membership fee.

9 (IV) Specifically how the member may cancel membership.

10 (V) The written disclosure, printed in capital letters with a  
11 minimum 14-point boldface type, indicating who to contact, both  
12 directly through the company and through the escrow account, for  
13 a refund.

14 (VI) The written disclosure made at the time of solicitation and  
15 at the time an enrollment package is sent to consumers.

16 (ii) When an organization provides documentation that clearly  
17 explains membership fee cancellation and refund terms to the  
18 Attorney General's reasonable satisfaction, which includes the  
19 information required by subclauses (I) to (VI), inclusive, of clause  
20 (i) of subparagraph (E), the Attorney General shall issue a  
21 revocable acknowledgment to the organization for it to obtain this  
22 exception. The acknowledgment issued by the Attorney General  
23 is not evidence of the adequacy or accuracy of the organization's  
24 actual disclosures and representations provided to consumers. No  
25 organization in any marketing to consumers may make any  
26 reference to an acknowledgment issued by the Attorney General  
27 under this clause.

28 (F) Provides the disclosures listed in subclauses (I) to (VI),  
29 inclusive, of clause (i) of subparagraph (E) to every prospective  
30 member.

31 (G) The exemption is null and void if the organization fails to  
32 comply with the conditions set forth in this section or if the  
33 Attorney General's office revokes the exemption due to a  
34 organization not being in full compliance with all of the provisions  
35 of this section.

36 (3) Any discount buying organization in which persons receive  
37 discount buying services incidentally as part of a package of  
38 services provided to or available to the individual on account of his  
39 or her membership in the organization, which is not organized for  
40 the profit of any person or organization, and which does not have

1 as one of its primary purposes or businesses, the provision of  
2 discount buying services.

3 (4) Any person, corporation, unincorporated association, or  
4 other organization, which, for a consideration collected from  
5 another entity, provides or purports to provide the clients of the  
6 other entity with the ability to purchase goods or services at  
7 discount prices, if the clients of the other entity do not order from,  
8 or pay any money to, that person, corporation, unincorporated  
9 association, or other organization; however, the entity, from which  
10 the customer purchases the right to obtain goods or services at  
11 discount prices, shall comply with the requirements of this title.

12 (b) "Contract for discount buying services" means a contract  
13 between one party (hereinafter referred to as the "buyer") who is  
14 purchasing the service for personal or family use, and a discount  
15 buying organization, whereby the buyer for a consideration  
16 receives the right to obtain goods or services from the discount  
17 buying organization, or to utilize the discount buying organization  
18 services in obtaining goods and services, at discount prices.

19 (c) "Discount prices" means prices which are represented to be  
20 lower on most or all offered goods or services than those generally  
21 charged for the items in the locality in which the representation is  
22 made.

23 This definition is not intended to affect the degree of savings  
24 which must be offered on an item or selection of items in order to  
25 truthfully and without misleading consumers represent an item,  
26 selection of items, or entire store as being "discount" or  
27 "discounted."

28 Code is amended to read:

29 ~~5000.5. No public member shall be a current or former~~  
30 ~~licensee of the board or an immediate family member of a licensee,~~  
31 ~~or be currently or formerly employed by, or represent, a public~~  
32 ~~accounting firm, bookkeeping firm, or firm engaged in providing~~  
33 ~~tax preparation as its primary business, or have any financial~~  
34 ~~interest in the business of a licensee. Each public member shall~~  
35 ~~meet all of the requirements for public membership on the board~~  
36 ~~as set forth in Chapter 6 (commencing with Section 450) of~~  
37 ~~Division 1.~~